

DE 00-211

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Valuation of J. Brodie Smith Hydro-Electric Station

Order Denying Motion for Rehearing  
and Addressing Procedural Issues

O R D E R    N O.    24,110

January 3, 2003

I.    MOTION FOR REHEARING

On December 6, 2002, Public Service Company of New Hampshire (PSNH) filed a motion with the New Hampshire Public Utilities Commission (Commission) seeking rehearing pursuant to RSA 541:3 of Order No. 24,086, entered in this docket on November 15, 2002. The City of Berlin (City), petitioner in this proceeding, submitted its opposition to the PSNH motion on December 23, 2002.

At issue in this docket is the J. Brodie Smith Hydro-Electric Station, a 14.2 megawatt facility located in Berlin and owned by PSNH as part of the generation portfolio it has retained on at least a temporary basis to provide transition service pursuant to the PSNH Restructuring Agreement and related statutes. See RSA 369-B:IV(b). In Order No. 24,086, we determined on a provisional basis that the acquisition of Smith Station by the City under RSA Chapter 38 would be in the public interest.

In seeking rehearing of that determination, PSNH raises three issues.

First, PSNH contends that rehearing is appropriate in light of newly discovered evidence. The evidence in question is an affidavit, and corroborating newspaper articles, concerning Fraser Papers, Inc. (Fraser), the company that has recently acquired the paper mill complex in Berlin and is in the process of reactivating the complex following its closure in connection with the former owner's bankruptcy. The evidence proffered by PSNH is to the effect that Fraser intends to develop its own cogeneration capacity in Berlin and, thus, has no intention of purchasing power from the City should the municipality acquire Smith Station. PSNH points out that the potential sale of low-cost energy from the City to Fraser was a key aspect of the City's argument in favor of the public interest determination made in Order No. 24,086.

PSNH's remaining arguments on rehearing concern legal issues. The Company contends that permitting the possible condemnation of Smith Station to go forward under RSA 38 is inconsistent with 2001 N.H. Laws 29, which provides for a delay in the divestiture of PSNH's remaining generation portfolio as a hedge against price volatility in the region's wholesale electricity market. PSNH also takes the position that the provisions of RSA 38:3 (creating a rebuttable presumption that

the proposed transaction is in the public interest in light of its endorsement by the Berlin City Council and municipal voters) are inapplicable because the City has failed to adhere to the requirements of RSA 38:2. Specifically, PSNH contends that because RSA 38:2 refers to municipal acquisition of "plants for the manufacture and distribution of electricity" (emphasis added), the City's plans for acquisition of Smith Station which do not include energy distribution facilities are not authorized by that statute.

In its opposition to the motion, the City takes exception to PSNH's suggestion that the evidence as to Fraser's intentions is of the newly discovered variety. According to the City, it has always recognized and acknowledged that the mill complex's owner was only one potential customer of the City's electric facilities. With regard to PSNH's legal arguments, the City notes that (1) the Commission has twice previously rejected the view that municipalization of PSNH generation assets is inconsistent with 2001 N.H. Laws 29, and (2) PSNH's interpretation of RSA 38:2 is contrary to both the language of the statute and actual practice in the state's electric industry.

RSA 541:3 provides that we may grant rehearing of a previously entered order if in our opinion "good reason for the rehearing is stated in the motion." We discern no good reason

for rehearing in PSNH's filing and therefore deny the Company's request.

PSNH correctly points out that the City placed considerable emphasis in its pre-filed direct testimony and at hearing on the possibility that the City could use Smith Station's output to serve the local mill complex owned by Fraser. However, Order No. 24,086 makes clear that we did not rely on that possibility in provisionally determining that the municipalization of Smith Station would be in the public interest.

As we noted in Order No. 24,086, "the very least the City can claim as a result of the [RSA 38:3] rebuttable presumption is that the transaction would be in the public interest from the standpoint of the municipality and its citizens." Order No. 24,086, slip op. at 24. We then went on to discuss the valuation methodology we would employ, *id.* at 24-27, and framed the remaining issue as "whether there is some larger public harm sufficient to rebut the RSA 38:3 presumption," *id.* at 27. We answered that question in the negative, determining that the valuation process itself could appropriately compensate PSNH's customers for the loss of the 14.2 megawatts of low-cost hydroelectric power. It is therefore clear that the evidence offered by PSNH on rehearing, while arguably of some relevance to

the City's policymakers and voters, does not figure into the kind of determination we undertook in Order No. 24,086.

We need not address the remaining issues raised by PSNH. As the Company acknowledges in its motion, these issues were fully briefed by the parties prior to the entry of Order No. 24,086 and the instant motion raises no new arguments with respect to those issues. We note that we granted the motion of the City to proceed under RSA 38 in *Public Service Company of New Hampshire*, 86 NHPUC 398, Order No. 23,733 (issued June 28, 2001), and that PSNH did not seek rehearing or reconsideration of that decision. Accordingly, PSNH has not shown good cause for us to revisit our previous analyses of these issues.

## **II. PROCEDURAL ISSUES**

It is therefore appropriate to address the procedural course of the next phase of the docket. We asked the parties to submit written statements of their position on this question by December 6, 2002. Both the City and PSNH made such a filing.

The City notes that, in an earlier phase of this proceeding, we had planned to retain a valuation expert to advise us with regard to the valuation phase of the docket. According to the City, such a course of action now would make this proceeding unnecessarily costly, given that both the City and PSNH can be expected to offer expert testimony in support of their respective valuation positions.

PSNH does not take a position on the valuation expert question beyond noting that the Commission should next decide whether we intend to pursue such a course. However, PSNH contends that several preliminary issues must be resolved before moving forward with valuation. These issues are (1) defining exactly what property the City seeks to value and condemn, (2) deciding on the disposition of certain headwater benefits projects that are upstream of Smith Station and would therefore be affected by its municipalization, (3) defining how the employee protection provisions of the PSNH Restructuring Settlement Agreement will affect Smith Station if municipalized, and (4) developing a market price forecast for New England that would apply to the valuation process.

In January of 2001, we entered an order in this docket that, *inter alia*, expressed an intention to hire an independent asset valuation specialist to advise us in connection with this proceeding. See *Public Service Co. of N.H.*, 86 NH PUC 25, 28 (2001). At the time, the case (and a companion petition as to another PSNH hydro-electric facility, since withdrawn) was moving forward under 2000 N.H. Laws 249:5, which required the hiring of such an expert and provided for a special municipalization process in the context of the PSNH Restructuring Settlement Agreement. Several months later, the landscape had changed significantly: The Legislature had imposed a delay in the

divestiture of PSNH's non-nuclear generation portfolio under the Restructuring Agreement and the City had sought to revise its petition to reflect its intention to proceed under the general municipalization provisions of RSA Chapter 38, rather than under the provisions of 2000 N.H. Laws 249:5. See *Public Service Co. of N.H.*, 86 NH PUC 398, 404-06 (2001) (granting City leave to amend petition and concluding that legislatively mandated delay in divestiture did not effect implied partial repeal of RSA 38).

The amendment to the City's petition is significant because, unlike 2000 N.H. Laws 249:5, the provisions of RSA 38 do not require the Commission to hire its own valuation expert in order for such a proceeding to move forward. Although we believe we have the discretion to do so nevertheless, the fact that neither the City nor PSNH has argued in favor of such a course is significant. As we have previously discussed at some length, RSA 38:9, V provides that the Commission's costs associated with this proceeding must be assessed to and allocated between the principal parties. See *Public Service Co. of N.H.*, 86 NH PUC 590 (2001) (declining, in preliminary phase of docket, to allocate all costs to City). It is reasonable in the circumstances for the parties to suggest, in effect, that for reasons of economy the Commission can and should plan to rely on its own staff expertise, supplemented as necessary by the expert views of the parties' witnesses. We particularly credit the City's implicit

confidence that the record will thereby be adequate to permit an appropriate valuation, given that the City bears the ultimate burden of proof here in its capacity as petitioner. Accordingly, at the present time we see no reason for the Commission to hire an expert to independently value the property at issue in this case.

It is further our view that the remaining matters raised by PSNH in its procedural filing do not require any additional proceedings antecedent to the valuation phase of the docket. We have already said as much with respect to the employee protection issue. See Order No. 24,086, slip op. at 32-33 (noting need to take further evidence on employee protection issue "in the valuation phase of the docket").

In our opinion, that issue as well as the others raised by PSNH are particularly susceptible to resolution by negotiation between PSNH and the City. While we cannot compel these two parties to reach agreement for valuation purposes on how the employee protections provisions of the PSNH Restructuring Settlement Agreement would apply to a municipalized Smith Station, how headwater benefits would be affected, precisely what PSNH plant and property would be condemned, and possibly even what market price forecasting model should apply, we can and do encourage it. To that end, we regard the cost allocation mechanism alluded to above as an incentive for good faith



negotiations. *See Public Service Co. of N.H.*, 86 NH PUC at 592 (noting that parties' conduct "may be relevant to the cost allocation determination").

In light of the foregoing, we will conduct a status conference in this case on January 29, 2003. We will expect the parties to state positions at that time with regard to the timing and structure of the valuation phase of the docket, and we will issue an appropriate procedural order thereafter.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the motion of Public Service Company of New Hampshire for rehearing of Order No. 24,086 is DENIED; and it is

**FURTHER ORDERED**, that the parties shall appear for a status conference at 10:00 a.m. on January 29, 2003 at the Commission's offices.

By order of the Public Utilities Commission of New Hampshire this third day of January, 2003.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Debra A. Howland

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Executive Director & Secretary